

35A-4-309 Nonprofit organizations -- Contributions -- Payments in lieu of contributions.

- (1) Notwithstanding any other provisions of this chapter for payments by employers, benefits paid to employees of nonprofit organizations, as described in Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3), that are exempt from income tax under Section 501(a), shall be financed in accordance with the following provisions:
- (a) Any nonprofit organization which is, or becomes, subject to this chapter shall pay contributions under Section 35A-4-303, unless it elects in accordance with this Subsection (1) to pay to the division for the unemployment fund an amount equal to the amount of regular benefits and of 1/2 of the extended benefits paid that is attributable to service in the employ of the nonprofit organization, to individuals for weeks of unemployment that begin during the effective period of this election.
 - (b)
 - (i) Any nonprofit organization that is, or becomes, subject to this chapter may elect to become liable for payments in lieu of contributions for a period of not less than one contribution year beginning with the date on which the organization becomes subject to this chapter.
 - (ii) The nonprofit organization shall file a written notice of its election with the division not later than 30 days immediately following the date that the division gives notice to the organization that it is subject to this chapter.
 - (c) Any nonprofit organization that makes an election in accordance with Subsection (1)(b)(i) shall continue to be liable for payments in lieu of contributions until it files with the division a written notice terminating its election, not later than 30 days prior to the beginning of the contribution year for which this termination shall first be effective.
 - (d)
 - (i) Any nonprofit organization that has been paying contributions under this chapter may change to a reimbursable basis by filing with the division, no later than 30 days prior to the beginning of any contribution year, a written notice of election to become liable for payments in lieu of contributions.
 - (ii) This election is not terminable by the organization for that year or the next year.
 - (e) The division may, for good cause, extend the period within which a notice of election or a notice of termination shall be filed and may permit an election to be retroactive.
 - (f)
 - (i) The division, in accordance with department rules, shall notify each nonprofit organization of any determination that the division may make of the organization's status as an employer, of the effective date of any election that it makes, and of any termination of this election.
 - (ii) These determinations are subject to reconsideration, appeal, and review in accordance with Section 35A-4-508.
- (2) Payments in lieu of contributions shall be made in accordance with this Subsection (2).
- (a) At the end of each calendar month, or at the end of any other period as determined by the division, the division shall bill each nonprofit organization or group of nonprofit organizations that has elected to make payments in lieu of contributions for an amount equal to the full amount of regular benefits plus one-half of the amount of extended benefits paid during this month or other prescribed period that is attributable to service in the employ of the organization.
 - (b) Payment of any bill rendered under Subsection (2)(a) shall be made no later than 30 days after the bill was mailed to the last-known address of the nonprofit organization or was otherwise delivered to it, unless there has been an application for review and redetermination in accordance with Subsection (2)(d).

- (c) Payments made by any nonprofit organization under this Subsection (2) may not be deducted or deductible, in whole or in part, from the remuneration of individuals in the employ of the organization.
- (d)
 - (i) The amount due specified in any bill from the division shall be conclusive on the organization unless, not later than 15 days after the bill was mailed to its last-known address or otherwise delivered to it, the organization files an application for redetermination by the division or an appeal to the Division of Adjudication, setting forth the grounds for the application or appeal in accordance with Section 35A-4-508.
 - (ii) The division shall promptly review and reconsider the amount due specified in the bill and shall thereafter issue a redetermination in any case in which the application for redetermination has been filed.
 - (iii) Any redetermination is conclusive on the organization unless, no later than 15 days after the redetermination was mailed to its last known address or otherwise delivered to it, the organization files an appeal to the Division of Adjudication in accordance with Section 35A-4-508 and Chapter 1, Part 3, Adjudicative Proceedings, setting forth the grounds for the appeal.
 - (iv) Proceedings on appeal to the Division of Adjudication from the amount of a bill rendered under this Subsection (2) or a redetermination of the amount shall be in accordance with Section 35A-4-508.
- (e) Past due payments of amounts in lieu of contributions are subject to the same interest and penalties that, under Subsection 35A-4-305(1), attach to past due contributions.
- (3) If any nonprofit organization is delinquent in making payments in lieu of contributions as required under Subsection (2), the division may terminate the organization's election to make payment in lieu of contributions as of the beginning of the next contribution year, and the termination is effective for that and the next contribution year.
- (4)
 - (a) In the discretion of the division, any nonprofit organization that elects to become liable for payments in lieu of contributions shall be required, within 30 days after the effective date of its election, to deposit money with the division.
 - (b) The amount of the deposit shall be determined in accordance with this Subsection (4).
- (c)
 - (i) The amount of the deposit required by this Subsection (4) shall be equal to 1% of the organization's total wages paid for employment as defined in Section 35A-4-204 for the four calendar quarters immediately preceding the effective date of the election, or the biennial anniversary of the effective date of election, whichever date shall be most recent and applicable.
 - (ii) If the nonprofit organization did not pay wages in each of these four calendar quarters, the amount of the deposit is as determined by the division.
- (d)
 - (i) Any deposit of money in accordance with this Subsection (4) shall be retained by the division in an escrow account until liability under the election is terminated, at which time it shall be returned to the organization, less any deductions as provided in this Subsection (4).
 - (ii) The division may deduct from the money deposited under this Subsection (4) by a nonprofit organization to the extent necessary to satisfy any due and unpaid payments in lieu of contributions and any applicable interest and penalties provided for in Subsection (2)(e).

- (iii) The division shall require the organization within 30 days following any deduction from a money deposit under this Subsection (4) to deposit sufficient additional money to make whole the organization's deposit at the prior level.
- (iv)
 - (A) The division may, at any time, review the adequacy of the deposit made by any organization.
 - (B) If, as a result of this review, the division determines that an adjustment is necessary, it shall require the organization to make an additional deposit within 30 days of written notice of the division's determination or shall return to it any portion of the deposit the division no longer considers necessary, as considered appropriate.
- (e) If any nonprofit organization fails to make a deposit, or to increase or make whole the amount of a previously made deposit, as provided under this Subsection (4), the division may terminate the organization's election to make payments in lieu of contributions.
- (f)
 - (i) Termination under Subsection (4)(e) shall continue for not less than the four-consecutive-calendar-quarter period beginning with the quarter in which the termination becomes effective.
 - (ii) The division may extend for good cause the applicable filing, deposit, or adjustment period by not more than 60 days.
- (5)
 - (a) Each employer liable for payments in lieu of contributions shall pay to the division for the fund the amount of regular benefits plus the amount of one-half of extended benefits paid that are attributable to service in the employ of the employer.
 - (b) If benefits paid to an individual are based on wages paid by more than one employer and one or more of these employers are liable for payments in lieu of contributions, the amount payable to the fund by each employer liable for the payments shall be determined in accordance with Subsection (5)(c) or (d).
 - (c) If benefits paid to an individual are based on wages paid by one or more employers who are liable for payments in lieu of contributions and on wages paid by one or more employers who are liable for contributions, the amount of benefits payable by each employer that is liable for payments in lieu of contributions shall be an amount that bears the same ratio to the total benefits paid to the individual as the total base-period wages paid to the individual by that employer bear to the total base-period wages paid to the individual by all of the individual's base-period employers.
 - (d) If benefits paid to an individual are based on wages paid by two or more employers who are liable for payments in lieu of contributions, the amount of benefits payable by each of those employers shall be an amount which bears the same ratio to the total benefits paid to the individual as the total base-period wages paid to the individual by the employer bear to the total base-period wages paid to the individual by all of the individual's base-period employers.
- (6)
 - (a)
 - (i) Two or more employers who have become liable for payments in lieu of contributions, in accordance with this section and Subsection 35A-4-204(2)(d), may file a joint application to the division for the establishment of a group account for the purpose of sharing the cost of benefits paid that are attributable to service in the employ of these employers.
 - (ii) Each application shall identify and authorize a group representative to act as the group's agent for the purpose of this Subsection (6).
 - (b)

- (i) Upon approval of the application, the division shall establish a group account for these employers effective as of the beginning of the calendar quarter in which it receives the application and shall notify the group's representative of the effective date of the account.
 - (ii) This account shall remain in effect for not less than two contribution years and thereafter until terminated at the discretion of the division or upon application by the group.
 - (c) Upon establishment of the account, each member of the group is liable for payments in lieu of contributions with respect to each calendar quarter in the amount that bears the same ratio to the total benefits paid in the quarter attributable to service performed in the employ of all members of the group as the total wages paid for service in employment by the member in the quarter bear to the total wages paid during the quarter for service performed in the employ of all members of the group.
 - (d) The department shall prescribe rules, with respect to applications for establishment, maintenance, and termination of group accounts authorized by this Subsection (6), for addition of new members to, and withdrawal of active members from, these accounts, for the determination of the amounts that are payable under this Subsection (6) by members of the group, and the time and manner of these payments.
- (7)
- (a) An employing unit that acquires a nonprofit organization or substantially all the assets of a nonprofit organization that has elected reimbursable coverage as defined in Subsection (1), in accordance with rules made by the commission, shall be given the subject date of the transferring nonprofit organization, provided the transferring nonprofit organization ceases to operate as an employing unit at the point of acquisition.
 - (b) The acquiring entity shall reimburse the Unemployment Compensation Fund for the transferring nonprofit organization's share of any unreimbursed benefits paid to former employees of the transferring nonprofit organization.

Amended by Chapter 297, 2011 General Session